

107TH CONGRESS  
2D SESSION

# H. R. 5118

To provide for enhanced penalties for accounting and auditing improprieties at publicly traded companies, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2002

Mr. SENSENBRENNER (for himself, Mr. SMITH of Texas, Mr. GOODLATTE, Mr. GEKAS, Mr. TAUZIN, Mr. COBLE, Ms. HART, and Mr. HYDE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for enhanced penalties for accounting and auditing improprieties at publicly traded companies, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Corporate Fraud Ac-  
5       countability Act of 2002”.

1 **SEC. 2. HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE**  
2 **FRAUD.**

3 (a) MAIL FRAUD.—Section 1341 of title 18, United  
4 States Code, is amended by striking “five” and inserting  
5 “20”.

6 (b) WIRE FRAUD.—Section 1343 of title 18, United  
7 States Code, is amended by striking “five” and inserting  
8 “20”.

9 (c) SECURITIES FRAUD.—Chapter 63 of title 18,  
10 United States Code, is amended by adding at the end the  
11 following:

12 **“§ 1348. Securities fraud**

13 “Whoever knowingly executes a scheme or artifice—

14 “(1) to defraud any person in connection with  
15 any security registered under section 12 or 15(d) of  
16 the Securities Exchange Act of 1934 (15 U.S.C. 78l,  
17 78o(d)) or section 6 of the Securities Act of 1933  
18 (15 U.S.C. 77f); or

19 “(2) to obtain, by means of false or fraudulent  
20 pretenses, representations, or promises, any money  
21 or property in connection with the purchase or sale  
22 of any security registered under section 12 or 15(d)  
23 of the Securities Exchange Act of 1934 (15 U.S.C.  
24 78l, 78o(d)) or section 6 of the Securities Act of  
25 1933 (15 U.S.C. 77f),

1 shall be fined under this title, or imprisoned not more than  
 2 25 years, or both.”.

3 (d) CLERICAL AMENDMENT.—The table of sections  
 4 at the beginning of chapter 63 of title 18, United States  
 5 Code, is amended by adding at the end the following:

“1348. Securities fraud.”.

6 **SEC. 3. TAMPERING WITH A RECORD OR OTHERWISE IM-**  
 7 **PEDING AN OFFICIAL PROCEEDING.**

8 Section 1512 of title 18, United States Code, is  
 9 amended—

10 (1) by redesignating subsections (c) through (i)  
 11 as subsections (d) through (j), respectively; and

12 (2) by inserting after subsection (b) the fol-  
 13 lowing new subsection:

14 “(c) Whoever corruptly—

15 “(1) alters, destroys, mutilates, or conceals a  
 16 record, document, or other object, or attempts to do  
 17 so, with the intent to impair the object’s integrity or  
 18 availability for use in an official proceeding; or

19 “(2) otherwise obstructs, influences, or impedes  
 20 any official proceeding, or attempts to do so,

21 shall be fined under this title or imprisoned not more than  
 22 20 years, or both.”.

1 **SEC. 4. AMENDMENT TO THE FEDERAL SENTENCING**  
2 **GUIDELINES.**

3 (a) REQUEST FOR IMMEDIATE CONSIDERATION BY  
4 THE UNITED STATES SENTENCING COMMISSION.—Pur-  
5 suant to its authority under section 994(p) of title 28,  
6 United States Code, and in accordance with this section,  
7 the United States Sentencing Commission is requested  
8 to—

9 (1) promptly review the sentencing guidelines  
10 applicable to securities and accounting fraud and re-  
11 lated offenses;

12 (2) expeditiously consider the promulgation of  
13 new sentencing guidelines or amendments to existing  
14 sentencing guidelines to provide an enhancement for  
15 officers or directors of publicly traded corporations  
16 who commit fraud and related offenses; and

17 (3) submit to Congress an explanation of ac-  
18 tions taken by the Sentencing Commission pursuant  
19 to paragraph (2) and any additional policy rec-  
20 ommendations the Sentencing Commission may have  
21 for combating offenses described in paragraph (1).

22 (b) CONSIDERATIONS IN REVIEW.—In carrying out  
23 this section, the Sentencing Commission is requested to—

24 (1) ensure that the sentencing guidelines and  
25 policy statements reflect the serious nature of securi-  
26 ties, pension, and accounting fraud and the need for

1 aggressive and appropriate law enforcement action  
2 to prevent such offenses;

3 (2) assure reasonable consistency with other  
4 relevant directives and with other guidelines;

5 (3) account for any aggravating or mitigating  
6 circumstances that might justify exceptions, includ-  
7 ing circumstances for which the sentencing guide-  
8 lines currently provide sentencing enhancements;

9 (4) ensure that guideline offense levels and en-  
10 hancements for an obstruction of justice offense are  
11 adequate in cases where documents or other physical  
12 evidence are actually destroyed or fabricated;

13 (5) ensure that the guideline offense levels and  
14 enhancements under United States Sentencing  
15 Guideline 2B1.1 (as in effect on the date of enact-  
16 ment of this Act) are sufficient for a fraud offense  
17 when the number of victims adversely involved is sig-  
18 nificantly greater than 50;

19 (6) make any necessary conforming changes to  
20 the sentencing guidelines; and

21 (7) assure that the guidelines adequately meet  
22 the purposes of sentencing as set forth in section  
23 3553(a)(2) of title 18, United States Code.

24 (c) EMERGENCY AUTHORITY AND DEADLINE FOR  
25 COMMISSION ACTION.—The United States Sentencing

1 Commission is requested to promulgate the guidelines or  
 2 amendments provided for under this sections as soon as  
 3 practicable, and in any event not later than the 120 days  
 4 after the date of enactment of this Act, in accordance with  
 5 the procedures set forth in section 21(a) of the Sentencing  
 6 Reform Act of 1987, as though the authority under that  
 7 Act had not expired.

8 **SEC. 5. DEBTS NONDISCHARGEABLE IF INCURRED IN VIO-**  
 9 **LATION OF SECURITIES FRAUD LAWS.**

10 Section 523(a) of title 11, United States Code, is  
 11 amended—

12 (1) in paragraph (17), by striking “or” after  
 13 the semicolon;

14 (2) in paragraph (18), by striking the period at  
 15 the end and inserting “; or”; and

16 (3) by adding at the end, the following:

17 “(19) that—

18 “(A) is a claim for—

19 “(i) the violation of any of the Fed-  
 20 eral securities laws (as that term is defined  
 21 in section 3(a)(47) of the Securities Ex-  
 22 change Act of 1934), any of the State se-  
 23 curities laws, or any regulation or order  
 24 issued under such Federal or State securi-  
 25 ties laws; or

1 “(ii) common law fraud, deceit, or  
 2 manipulation in connection with the pur-  
 3 chase or sale of any security; and

4 “(B) results, in relation to any claim de-  
 5 scribed in subparagraph (A), from—

6 “(i) any judgment, order, consent  
 7 order, or decree entered in any Federal or  
 8 State judicial or administrative proceeding;

9 “(ii) any settlement agreement en-  
 10 tered into by the debtor; or

11 “(iii) any court or administrative  
 12 order for any damages, fine, penalty, cita-  
 13 tion, restitutionary payment, disgorgement  
 14 payment, attorney fee, cost, or other pay-  
 15 ment owed by the debtor.”.

16 **SEC. 6. CORPORATE RESPONSIBILITY FOR FINANCIAL RE-**  
 17 **PORTS.**

18 (a) IN GENERAL.—Chapter 63 of title 18, United  
 19 States Code, is amended by adding at the end the fol-  
 20 lowing:

21 **“§ 1349. Failure of corporate officers to certify finan-**  
 22 **cial reports**

23 “(a) CERTIFICATION OF PERIODIC FINANCIAL RE-  
 24 PORTS.—Each periodic report containing financial state-  
 25 ments filed by an issuer with the Securities Exchange

1 Commission pursuant to section 13(a) or 15(d) of the Se-  
 2 curities Exchange Act of 1934 (15 U.S.C. 78m(a) or  
 3 78o(d)) shall be accompanied by a written statement by  
 4 the chairman of the board, chief executive officer, and  
 5 chief financial officer (or equivalent thereof) of the issuer.

6 “(b) CONTENT.—The statement required under sub-  
 7 section (a) shall certify that those financial statements  
 8 fairly and accurately represent, in all material respects,  
 9 the operations and financial condition of the issuer.

10 “(c) CRIMINAL PENALTIES.—Whoever—

11 “(1) knowingly violates this section shall be  
 12 fined not more than \$1,000,000, or imprisoned not  
 13 more than 10 years, or both; or

14 “(2) willfully violates this section shall be fined  
 15 not more than \$5,000,000, or imprisoned not more  
 16 than 20 years, or both.”.

17 (b) CLERICAL AMENDMENT.—The table of sections  
 18 at the beginning of chapter 63 of title 18, United States  
 19 Code, is amended by adding at the end the following:

“1349. Failure of corporate officers to certify financial reports.”.

20 **SEC. 7. ATTEMPTS AND CONSPIRACIES.**

21 Section 1 of title 18 is amended to provide:

22 **“§ 1. Attempt and conspiracy**

23 “Any person who attempts or conspires to commit  
 24 any offense against the United States shall be subject to  
 25 the same penalties as those prescribed for the offense, the



1 commission of which was the object of the attempt or con-  
 2 spiracy.”.

3 **SEC. 8. INCREASED CRIMINAL PENALTIES UNDER SECURI-**  
 4 **TIES EXCHANGE ACT OF 1934.**

5 Section 32(a) of the Securities Exchange Act of 1934  
 6 (15 U.S.C. 78ff(a)) is amended—

7 (1) by striking “\$1,000,000, or imprisoned not  
 8 more than 10 years” and inserting “\$5,000,000, or  
 9 imprisoned not more than 20 years”; and

10 (2) by striking “\$2,500,000” and inserting  
 11 “\$25,000,000”.

12 **SEC. 9. TEMPORARY FREEZE AUTHORITY FOR THE SECURI-**  
 13 **TIES AND EXCHANGE COMMISSION.**

14 (a) IN GENERAL.—Section 21C(c) of the Securities  
 15 Exchange Act of 1934 (15 U.S.C. 78u–3(c)) is amended  
 16 by adding at the end the following:

17 “(3) TEMPORARY FREEZE.—

18 “(A) IN GENERAL.—

19 “(i) ISSUANCE OF TEMPORARY  
 20 ORDER.—Whenever, during the course of a  
 21 lawful investigation involving possible vio-  
 22 lations of the Federal securities laws by an  
 23 issuer of publicly traded securities or any  
 24 of its directors, officers, partners,  
 25 controlling persons, agents, or employees, it

1 shall appear to the Commission that it is  
2 likely that the issuer will make extraor-  
3 dinary payments (whether compensation or  
4 otherwise) to any of the foregoing persons,  
5 the Commission may petition a Federal  
6 district court for a temporary order requir-  
7 ing the issuer to escrow, subject to court  
8 supervision, those payments in an interest-  
9 bearing account for 45 days.

10 “(ii) STANDARD.—A temporary order  
11 shall be entered under clause (i), only after  
12 notice and opportunity for a hearing, un-  
13 less the court determines that notice and  
14 hearing prior to entry of the order would  
15 be impracticable or contrary to the public  
16 interest.

17 “(iii) EFFECTIVE PERIOD.—A tem-  
18 porary order issued under clause (i)  
19 shall—

20 “(I) become effective imme-  
21 diately;

22 “(II) be served upon the parties  
23 subject to it; and

24 “(III) unless set aside, limited or  
25 suspended by a court of competent ju-

1 jurisdiction, shall remain effective and  
2 enforceable for 45 days.

3 “(iv) EXTENSIONS AUTHORIZED.—

4 The effective period of an order under this  
5 subparagraph may be extended by the  
6 court upon good cause shown for not  
7 longer than 45 additional days, provided  
8 that the combined period of the order shall  
9 not exceed 90 days.

10 “(B) PROCESS ON DETERMINATION OF  
11 VIOLATIONS.—

12 “(i) VIOLATIONS CHARGED.—If the  
13 issuer or other person described in sub-  
14 paragraph (A) is charged with any viola-  
15 tion of the Federal securities laws before  
16 the expiration of the effective period of a  
17 temporary order under subparagraph (A)  
18 (including any applicable extension period),  
19 the order shall remain in effect, subject to  
20 court approval, until the conclusion of any  
21 legal proceedings related thereto, and the  
22 affected issuer or other person, shall have  
23 the right to petition the court for review of  
24 the order.

1                   “(ii) VIOLATIONS NOT CHARGED.—If  
 2                   the issuer or other person described in sub-  
 3                   paragraph (A) is not charged with any vio-  
 4                   lation of the Federal securities laws before  
 5                   the expiration of the effective period of a  
 6                   temporary order under subparagraph (A)  
 7                   (including any applicable extension period),  
 8                   the escrow shall terminate at the expira-  
 9                   tion of the 45-day effective period (or the  
 10                  expiration of any extension period, as ap-  
 11                  plicable), and the disputed payments (with  
 12                  accrued interest) shall be returned to the  
 13                  issuer or other affected person.”.

14           (b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of  
 15 the Securities Exchange Act of 1934 (15 U.S.C. 78u-  
 16 3(c)(2)) is amended by striking “This” and inserting  
 17 “paragraph (1)”.

18 **SEC. 10. AUTHORITY OF THE COMMISSION TO PROHIBIT**  
 19 **PERSONS FROM SERVING AS OFFICERS OR**  
 20 **DIRECTORS.**

21           (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
 22 21C of the Securities Exchange Act of 1934 (15 U.S.C.  
 23 78u-3) is amended by adding at the end the following:

24           “(f) AUTHORITY OF THE COMMISSION TO PROHIBIT  
 25 PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—

1 In any cease-and-desist proceeding under subsection (a),  
2 the Commission may issue an order to prohibit, condi-  
3 tionally or unconditionally, and permanently or for such  
4 period of time as it shall determine, any person who has  
5 violated section 10(b) or the rules or regulations there-  
6 under, from acting as an officer or director of any issuer  
7 that has a class of securities registered pursuant to sec-  
8 tion, or that is required to file reports pursuant to section  
9 (d), if the conduct of that person demonstrates unfitness  
10 to serve as an officer or director of any such Issuer.”.

11 (b) SECURITIES ACT OF 1933.—Section 8A of the  
12 Securities Act of 1933 (15 U.S.C. 77h–1) is amended by  
13 adding at the end of the following:

14 “(f) AUTHORITY OF THE COMMISSION TO PROHIBIT  
15 PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—  
16 In any cease-and-desist proceeding under subsection (a),  
17 the Commission may issue an order to prohibit, condi-  
18 tionally or unconditionally, and permanently or for such  
19 period of time as it shall determine, any person who has  
20 violated section 17(a)(1) or the rules or regulations there-  
21 under, from acting as an officer or director of any issuer  
22 that has a class of securities registered pursuant to section  
23 of the Securities Exchange Act of 1934, or that is required  
24 to file reports pursuant to section 15(d) of that Act, if

- 1 the conduct of that person demonstrates unfitness to serve
- 2 as an officer or director of any such issuer.”.

